IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6400 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUBEN M KUVA

Versus

STATE OF GUJARAT

Appearance:

MR BD KARIA for Petitioner

Mr M.A.. Bukhari instructed by M/S PATEL ADVOCATES for Respondent No. 1

MR HV CHHATRAPATI for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

This petition is filed for quashing and setting aside the order at Annexure `B', dated June 20, 1988 passed by

the Superintendent, Community Health Centre, Khambhalia, respondent No.2.

The case of the petitioner was that she was appointed as Auxiliary nurse/midwife in the Community Health Centre, Khambhalia from April 2, 1984. It was her case that as Auxiliary Nurse, she was entitled to a quarter in accordance with law and she was allotted quarter for about six months from her appointment in the compound of the Centre. She was occupying that quarter. It was also her case that there were 19 quarters in the compound and 9 quarters were allotted to nurses working in the Health Centre. She was one of them. It was also stated that she was discharging emergency duties as a nurse/ midwife and for that, reliance was placed on a circular dated 3rd May, 1988 (Annexure `A') in which it was stated that petitioner was required to remain on duty in emergency in operation theatre from 1st May to 31st May, 1988. It was also stated that suddenly and abruptly, vide an order dated June 20, 1988 at Annexure `B', respondent No.2 directed her to vacate the quarter occupied by her inter alia observing that on 11th June,1988 Honourable Health Minister had visited the Health Centre and as per his suggestion,dated 13th June, 1988, quarters were to be allotted only to those employees who were on emergency duty and since quarters were to be allotted to those persons, she was asked to hand over peaceful and vacant possession of the quarter within one month, failing which appropriate proceedings would be taken against her. Being aggrieved by the said order, the petitioner issued a notice under Section 80 of the Code of Civil Procedure, 1908 (Annexure `C') wherein it was stated that she was entitled to a quarter as earmarked for class III and on the basis of seniority, she was allotted quarter occupied by her. No order was passed and no direction was issued by the Health Minister and action was taken by the Superintendent on his own which was arbitrary and illegal. It was also stated that before passing order, no notice was issued, no explanation was called and principles of natural justice were not complied with. It was,therefore, stated that notice was required to be withdrawn and/or cancelled, failing which appropriate proceedings would be taken against the authorities. It appears that notice was replied by respondent No.2 in which it was clearly mentioned that the petitioner was Auxiliary nurse/ midwife . There were other nurses also and there were separate categories of nurses. Pay scales of both the categories were also different and the petitioner was not comparatively senior nurse and that her services were not required in emergency and she was,therefore, not entitled to quarter. Hence, order was

passed which cannot be said to be illegal or contrary to law and the action taken by the authorities was in consonance with law.

It appears that in view of the above reply filed by the Superintendent, respondent No.2, the petitioner approached this Court by filing this petition on 19th September, 1988. On 20th September, 1988, when the matter was placed for admission, following order was passed:

> "Notice returnable on 3.10.1988 . Ad-interim relief against eviction except in accordance with law and after due procedure of law. It is clarified that the authorities are not restrained from initiating disciplinary action."

Thereafter, on 11th October, 1988, petition was admitted, rule was issued and interim relief in terms of para 12 (B) was granted. Para 12 (B) reads as under :

> "12 (B) Pending admission and till final disposal of this Special Civil Application, the stay as to execution and operation of the impugned order at Annexure B may kindly be granted in interest of justice and the respondents be restrained from evicting the petitioner from Government quarter situated at the compound of Community Health Centre, at Khambhalia."

Mr. Karia for the petitioner submitted that the petitioner is a Class III employee. She was,therefore, entitled to Government quarter. She was allotted quarter in the Health Centre and as per the scheme, she was allotted quarter which could not have been taken away. He also submitted that on the basis of seniority that the quarter was allotted and that when she was doing emergency work, which is also clear from Annexure `A', there was no reason to ask her to vacate the quarter alleging that her services were not required in emergency. This is factually incorrect and the order passed by respondent No.2 was illegal and contrary to law. The counsel also submitted that there is nothing on record as to how instructions were issued by the Honourable Health Minister and it was the case of the petitioner that no such instructions were issued and respondent No.2 under the guise of instructions by the Honourable Health Minister has passed the order which is illegal. He also made a grievance that though the petition was filed in 1988, no affidavit was filed. He,therefore, submitted that the petition deserves to be

allowed. He also stated that at the most, it can be clarified that it is open to the authorities to take appropriate proceedings in accordance with law and pending such proceedings, petitioner may not be evicted.

Mr. Bukhari, learned AGP on the other hand submitted that the action taken by the authorities cannot be said to be contrary to law. He stated that it is true that no affidavit is filed by the authorities, but it is also clear that the order passed by respondent No.2 at Annexure `B' cannot be said to be illegal or contrary to law as in reply to the statutory notice, position has been made clear by respondent No.2 . He,therefore, submitted that petition deserves to be dismissed.

In the facts and circumstances of the case, in my opinion, no case has been made out so as to hold that the order passed at Annexure `B' is illegal or contrary to law. In Annexure `B', it is specifically stated that at the time of visit by the Honourable Health Minister, it was brought to his notice that quarters were occupied by certain nurses/ midwives and that they were to be allotted to those employees whose services were needed in emergency. Instructions were,therefore, issued to the authorities to take appropriate proceedings so that quarters may be allotted to those persons. That the statutory notice which was issued under Section 80 of the Code of Civil Procedure, 1908, by the petitioner, was replied wherein it was specifically stated that services of the petitioner were not required for emergency work. It is true that vide order at Annexure `A', the petitioner was asked to perform emergency work or some time. But from that circular itself, it is clear that it was for a period of one month i.e. from 1st May to 31st May, 1988. Obviously, from this, it cannot be said that her services were required for all the timer for emergency work and when in reply to the notice, it was stated that her services were not required for emergency work, this Court cannot enter into correctness or otherwise of the facts stated therein. Since the order cannot be said to be illegal, as it is based on reasonable classification viz. that quarters were to be allotted to those persons whose services were required for emergency work, such order is not liable to be set aside.

For the foregoing reasons, in my opinion, the petition deserves to be dismissed and is accordingly dismissed. Rule discharged. Interim relief vacated. No order as to costs. Mr. Karia stated that petitioner was appointed in 1984 and it may be that after more than 15 years of

service, even on the basis of seniority, she may be entitled to a quarter. If it is so, obviously, she may be allotted quarter and obviously, disposal of this petition will not come in her way.

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parekh